

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of)	
)	
Improving Public Safety)	
Communications in the)	
800 MHz Band)	WT Docket No. 02-55
)	
Consolidating the 900 MHz)	
Industrial/Land Transportation)	
and Business Pool Channels)	
)	
Wireless Telecommunications Bureau)	
Seeks Comment on "Supplemental)	DA 03-19
Comments of the Consensus Parties")	
Filed in the 800 MHz Public Safety)	
Interference Proceeding)	

TO: The Commission

SUPPLEMENTAL COMMENTS OF XCEL ENERGY SERVICES INC.

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EXECUTIVE SUMMARY

Even in light of the Supplemental Comments filed by the Consensus Parties, the Consensus Plan is an unacceptable approach to resolving interference in the 800 MHz. In essence, the Consensus Plan would provide Nextel with contiguous spectrum blocks and impose upon other 800 MHz band licensees the burden of resolving the interference problem. Despite earlier claims concerning the beneficial effect of realigning the band to provide Nextel with a more manageable spectrum allocation, the Consensus Plan would subject licensees to unprecedented performance standards as a condition of receiving interference protection. Those licensees that can meet these standards would be required to incur substantial costs to meet them. Those that cannot meet the standards would have no recourse in the event of interference, effectively rendering them secondary *vis-à-vis* Nextel.

As supplemented, the Consensus Plan would further burden 800 MHz licensees by subjecting them to overbroad or unnecessary spectrum freezes and a relocation process in which their interests were not properly accounted for. Under the Consensus Plan, the Relocation Coordination Committee, which would be comprised of Consensus Party representatives, would have extraordinary unchecked power over a process that will involve the expenditure of hundreds of millions of dollars by the licensees subject to it.

The FCC cannot adopt such an unfair and wasteful approach. Instead, the FCC should reinforce and enhance non-interference rules, facilitate access to information necessary to identify and rectify interference and vigorously enforce violations. If the FCC

deems rebanding necessary, it should impose a market-based framework that would allow parties to negotiate on equal footing.

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Xcel Energy Services Inc., by and through its undersigned counsel, hereby files these comments in the above referenced proceeding in response to the Federal Communications Commission’s Public Notice¹ requesting comments on the supplemental comments filed by the proponents of the "Consensus Plan."² For the reasons discussed below, even as supplemented,

¹ *Public Notice*, Wireless Telecommunications Bureau Seeks Comment on “Supplemental Comments of the Consensus Parties” Filed in the 800 MHz Public Safety Interference Proceeding, DA 03-19 (January 3, 2003) (*Supplemental Comment Public Notice*).

² Supplemental Comments of Aeronautical Radio Inc., the American Mobile Telecommunications Association, the American Petroleum Institute, the Association of Public Safety Communications Officials - International, Forest Industries Telecommunications, the

the Consensus Plan continues to constitute an unreasonable and unacceptable approach to the resolution of Public Safety interference and Xcel Energy urges the FCC to reject in favor of more reasonable and fair measures.

I. INTRODUCTION

Xcel Energy Services Inc. through its operating companies – Northern States Power Company, Northern States Power Company-Wisconsin, Public Service Company of Colorado, Cheyenne Light Fuel & Power Company, and Southwestern Public Service Company – (collectively “Xcel Energy”) generates, transmits and distributes electricity and distributes natural gas to its customers. Xcel Energy’s electric and gas utility system serves over 3.1 million electric and 1.5 million natural gas customers. Xcel Energy operates more than 70 generating facilities that are capable of generating up to 15,394 megawatts of electricity. The Xcel Energy service territory includes large portions of Colorado, Minnesota and Wisconsin, as well as portions of Arizona, Kansas, Michigan, New Mexico, North Dakota, Oklahoma, South Dakota, Texas and Wyoming.

Xcel Energy has the complex task of providing energy to its customers under challenging circumstances. In particular, Xcel Energy provides service during the severe weather common to the winter in Minnesota, Wisconsin, Colorado, North and South Dakota and Wyoming. To facilitate its internal communications and monitoring of its power generation and distribution

Industrial Telecommunications Association, Inc., the International Association of Chiefs of Police, the International Association of Fire Chiefs, the International Municipal Signal Association, the Major Cities Chiefs Association, the Major County Sheriffs Association, the National Sheriffs Association, Nextel Communications, Inc., the Personal Communications Industry Association, the Taxicab, Limousine and Paratransit Association and the National Stone, Sand and Gravel Association, WT Docket No. 02-55 (December 24, 2002) (“*Supplemental Comments*”).

system, Xcel Energy operates an extensive 800 MHz private land mobile radio system licensed in the Industrial/Land Transportation Radio Service and providing coverage in Colorado, Minnesota, Oklahoma, New Mexico, Texas and Wyoming. Xcel Energy uses its land mobile system to coordinate safely and efficiently the control, monitoring and repair of its generation, transmission and distribution facilities, including communications with work crews responding to service requests, power outages, and related issues. Among its many customers, Xcel Energy serves hospitals and other critical facilities throughout its service territory. Xcel Energy's radio communication system is essential to its ability to maintain continuous service to these customers while simultaneously assuring the safety of its crews working on high voltage and other potentially dangerous equipment.

In total, Xcel Energy has licensed over 400 800 MHz frequencies at 50 sites located throughout the private land mobile radio system. In addition, Xcel Energy has constructed over 150 control stations and operates nearly 5,000 mobile units. Xcel Energy's frequency holdings consist of 65 discrete 800 MHz frequency pairs, of which, three frequency pairs were licensed from the General Category pool, seven from the Business pool, 20 from the Public Safety pool,³ and 35 from the Industrial/Land Transportation ("I/LT") pool. In all, eight of Xcel Energy's total licensed frequencies are in the General Category, 100 are in the interleaved Business, I/LT or Public Safety bands that would comprise the proposed Guard Band at 859-861 MHz and 309 are in the remaining interleaved Business, I/LT or Public Safety spectrum at 800 MHz.

Because of its reliance on the integrity of its land mobile communications at 800 MHz, Xcel Energy has a strong interest in this proceeding. Xcel Energy earlier filed Comments in Response to the FCC's original NPRM in this matter, detailing the extraordinary costs associated

with the 800 MHz realignment plans under consideration and urging the FCC to adopt an individualized approach involving negotiated technical solutions.⁴ The Supplemental Comments establish a more detailed version of the earlier Nextel Plan that continues to advocate sweeping relocation of all 800 MHz licensees as a solution to the interference problem. The Supplemental Comments also include a number of new and unsettling measures that Xcel Energy must object to. Specifically, in addition to providing Nextel with a completely contiguous block of spectrum purportedly necessary to eliminate Nextel-caused interference, the Consensus Plan would now also *diminish* Nextel's duty to avoid and remedy interference to other licensees.

Additionally, the freezes imposed by the Supplemental Comments would effectively lock down the 800 MHz band for Business and I/LT licensees such as Xcel Energy, making it extremely burdensome or impossible to address system requirements.

Finally, the manner in which the Consensus Plan would relocate Xcel Energy's operations from the General Category is not conducive to fair administration and poses significant risk to Xcel Energy's operations. Consequently, Xcel Energy urges the FCC not to adopt the Consensus Plan. Instead the FCC should implement measures to ensure that licensees refrain from interfering with each other and that each party bears the costs associated with its own operations.

³ Although Xcel Energy is not a Public Safety licensee, the Commission has granted Xcel Energy a waiver to license Public Safety frequencies.

⁴ *In the Matter of Improving Public Safety Communications in the 800 MHz Band; Consolidating the 900 MHz Industrial/Land Transportation and Business Pool Channels*, WT Docket No. 02-55, *Notice of Proposed Rulemaking* (March 15, 2002) (“*NPRM*”); Comments of Xcel Energy Services Inc.

II. THE CONSENSUS PLAN IS A MISDIRECTED AND OVERBROAD APPROACH

A. The Consensus Plan Would Place an Extraordinary and Unwarranted Burden on Non-Interfering Licensees

One of the few issues on which the parties to this matter, including Nextel, agree is that Nextel's operations are a chief cause of interference to Public Safety operations at 800 MHz.⁵ Notwithstanding this striking unanimity, the Consensus Plan seeks to remedy this interference primarily at the expense of private land mobile licensees, such as Xcel Energy, that are not causing interference. At the same time, the Consensus Plan would greatly ease Nextel's burden with regard to the interference that it causes by placing significant conditions upon other licensees' rights to complain. This extraordinarily imbalanced approach reflects the profound influence Nextel has on the inaptly named "Consensus Parties." The FCC cannot adopt such an illogical and inequitable approach.

1. The Consensus Plan Would Improperly Condition Licensees' Interference Rights.

As part of the band restructuring that the Consensus Parties claim is necessary to protect Public Safety licensees from interference, the Consensus Plan would place significant *conditions* on a licensee's ability to complain of interference. Specifically, integral to the take-it-or-leave-it Consensus Plan has been the requirement that Nextel receive contiguous spectrum separated from Public Safety licensees, thereby eliminating the "root cause of CMRS-Public Safety

⁵ See generally, Promoting Public Safety Communications -- Realigning the 800 MHz Land Mobile Radio Band to Rectify Commercial Mobile Radio - Public Safety Interference and Allocate Additional Spectrum to Meet Critical Public Safety Needs at 9 (Nov. 21, 2001) ("*Nextel White Paper*").

interference."⁶ Now, in addition to this extraordinarily disruptive and costly measure, the Consensus Parties indicate that Nextel requires *other licensees* to improve their performance before it can or will protect them from interference.⁷ Specifically, the Consensus Plan as supplemented provides that the *existing* systems of non-cellular licensees located in the 851-859 MHz band are only entitled to protection from CMRS interference if they establish a measured desired signal level of -98 dBm at the site of interference.⁸ New or replacement systems at 851-859 MHz only have a right to protection from interference to a measured desired signal level of -95 dBm.⁹ In the proposed Guard Band at 859-861 MHz, where the Consensus Plan would first seek to relocate current 851-854 MHz Business and I/LT licensees, the interference protection thresholds increase linearly with the associated frequency, from 0 dB at 859 MHz to a maximum of 33 dB at 860.5-861 MHz.¹⁰

The Consensus Plan proposals would effectively provide Nextel with *carte blanche* to interfere with licensees that could not meet the interference thresholds. Although this would most profoundly impact the Guard Band, in which Xcel Energy has 100 channels currently licensed, even the interleaved channels will be affected. In most areas, licensees commonly have licensed the maximum available power in a closely spaced environment, making any required power increases or other adjustments necessary to reach the thresholds impossible to implement and reducing the spectrum available for licensing in the Guard Band.

⁶ See, Comments of Nextel Communications, September 23, 2002, at p. 4, filed in response to Public Notice, "Wireless Telecommunications Bureau Seeks Comment on 'Consensus Plan' Filed in 800 MHz Public Safety Interference Proceeding," DA 02-2202 (rel. Sep. 6, 2002).

⁷ Supplemental Comments, at p. 41

⁸ Id.

⁹ Id.

¹⁰ Id., at p. 41-42.

These are patently inappropriate measures. Critical Infrastructure Industry Licensees such as Xcel Energy, licensed systems at 800 MHz to support their critical operations *because of the exclusivity of use available there*. Effectively undermining this exclusivity would be devastating to operations in the 800 MHz band. To do so for the purpose of easing Nextel's interference burden would be indefensible. Furthermore, the fact that these measures are necessary casts into question the efficacy of the much vaunted band realignment, which was supposed to enable Nextel to manage its intermodulation interference.

2. The Proposed Licensing Freezes Go Beyond What Would be Necessary to the Relocation Process

The Consensus Plan also would implement two overbroad or unnecessary licensing freezes applicable to the Business and I/LT licensees. One of these freezes would prohibit Business and I/LT licensees from licensing the spectrum vacated by Nextel that is not relicensed by Public Safety licensees for a period of five years following the completion of Public Safety relocation.¹¹ While there is at least a logical connection between freezing Nextel vacated spectrum and the relocation process, a freeze that extends beyond the completion of relocation is unnecessary. This is effectively an allocation of spectrum to Public Safety licensees. The extent to which such spectrum will be left unused following relocation is currently unknown, however, and it is therefore not possible for the FCC to make a reasoned determination of the propriety of this proposal.

The other freeze would commence on the effective date of the FCC's order implementing the Consensus Plan and would prohibit the licensing of new Business or I/LT spectrum that is

¹¹ Id., at p. 12

not related to relocation of licensees under the Consensus Plan.¹² Licensees of extensive 800 MHz systems commonly must seek to expand or otherwise adjust their licensed parameters in order to ensure seamless coverage over their service areas. A freeze on all 800 MHz Business and I/LT spectrum is yet another example of the Consensus Plan's sledgehammer approach to issues impacting Business and I/LT licensee rights in this matter and would subject those licensees to significant and unnecessary burdens.

Xcel Energy objects to the implementation of mandatory band realignment as a solution to interference at 800 MHz. If the FCC adopts realignment, it should narrowly tailor any licensing freezes so that they extend only as far as is necessary to serve a legitimate purpose.

3. The Proposals for Relocation Establish an Unfair and Unnecessarily Disruptive Process

The Consensus Plan would require General Category licensees such as Xcel Energy to undergo costly and disruptive relocation to inferior spectrum under an oppressive regulatory framework. As with so many other elements of the Consensus Plan, this one is skewed in favor of Nextel's interests and burdens Business and I/LT licensees in order to implement a solution to a problem they did not cause.

Under the Consensus Plan, the reconfiguration of the 800 MHz band would be controlled by a new Relocation Coordination Committee, consisting Nextel and two Public Safety and two private wireless coordinator members of the Land Mobile Communications Council.¹³ The RCC would essentially control, among other things, the relocation of I/LT incumbents in the General Category, such as Xcel Energy, to the Guard Band and other interleaved channels.

¹² Id., at Appendix C-21.

¹³ Id., at p. 16.

On its face, its proposed structure would give Nextel a one-fifth vote, extraordinary authority over a process in which it has a direct pecuniary interest. Given the fact that the remaining members of the RCC would be split evenly along Public Safety/private wireless policy lines, Nextel's pivotal swing vote will in many, if not most, instances give it *de facto* control over the RCC. Additionally, much of the RCC's functions as they impact private 800 MHz licensees would be carried out by a Phase I Planning Committee, consisting of *one* Public Safety coordinator and *one* private wireless coordinator and Nextel, further increasing Nextel's express authority over this process.¹⁴

The RCC or the Stage 1 Planning would be responsible for, among other things, the elaborate and overbroad information disclosure requirements imposed on relocating licensees and developing a detailed frequency plan for relocating licensees with little oversight or accountability to the FCC.¹⁵ In the event that a relocating licensee is dissatisfied with Nextel's proposal concerning the costs and circumstances of its relocation, its ultimate recourse is limited to arbitration before an *RCC* selected panel,¹⁶ the equivalent of giving to one litigant the right to select the judge to hear its case. The conflict of interest inherent in the Consensus Plan Proposals is inconsistent with fundamental due process. The FCC cannot adopt a mechanism in which one of the interested parties has any significant, much less controlling, authority over the process.

Aside from issues of partiality, the RCC is given essentially unchecked power over the relocation process, which involves extraordinary issues of safety and hundreds of millions of dollars in expenditures. Even if this were good policy, which it is not, the FCC lacks the

¹⁴ *Id.*, at p. 18.

¹⁵ *Id.*, at p. 19, Appendix C-11-12.

¹⁶ *Id.*, at Appendix C-19.

authority to delegate such extraordinary power to an outside entity in the absence of express statutory authority not present here. This is an unacceptable proposal.

B. There Are Reasonable Alternatives to the Consensus Plan

The FCC has at its disposal a number of methods of dealing with interference issues that are more equitable, reasonable and free of legal problems than the Consensus Plan. Xcel Energy continues to urge the FCC to adhere to free market principles in its efforts to resolve interference. As Xcel Energy has argued earlier, this could be effected by enhancing the FCC rules regarding interference resolution and facilitating access to database information about possibly interfering licensees.¹⁷ In the event that the FCC does determine that rebanding is necessary, Xcel Energy submits that this should likewise occur under a free-market framework in accordance with previous FCC directed band relocations. Specifically, there is no need for an entity such as RCC as long as reasonable rules are in place to guide the process.

III. CONCLUSION

The Consensus Plan is a biased, overwrought effort to resolve a serious problem. Its measures would run roughshod over the rights and interests of the private land mobile community, many members of which have an impact on the public welfare comparable to that of traditional Public Safety. While the resolution of interference is a vital objective, it must be pursued in a way that can be justified as effective and not unduly harmful to other parties. The Consensus Parties can not make this case with regard to their plan and the FCC should reject it in favor of sounder measures.

¹⁷ NPRM, Comments of Xcel at p. 7.

WHEREFORE, THE PREMISES CONSIDERED, Xcel Energy Services Inc. respectfully requests that the Commission consider these comments and proceed in a manner consistent with the views expressed herein.

Respectfully submitted,

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Dated: February 10, 2003

CERTIFICATE OF SERVICE

I, Christine Bisio, do hereby certify that on this 11th day of February 2003, I caused a copy of the foregoing "Supplemental Comments of Xcel Energy Services Inc." to be hand-delivered to each of the following:

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